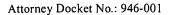
08-27-04

PTO/SB/21 (02-04) Approved for use through 07/31/2006. OMB 0651-0031 U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE are required to respond to a collection of information unless it displays a valid OMB control number. the Paperwork Reduction Act of 1995, no persons Application Number PATEN 10/655,332 **TRANSMITTAL** Filing Date September 4, 2003 **FORM** First Named Inventor Hank Gevedon Art Unit 3644 (to be used for all correspondence after initial filing) **Examiner Name** Susan C. Alimenti Attorney Docket Number 946-001 Total Number of Pages in This Submission **ENCLOSURES** (Check all that apply) After Allowance communication Fee Transmittal Form Drawing(s) to Technology Center (TC) Appeal Communication to Board Licensing-related Papers of Appeals and Interferences Fee Attached Appeal Communication to TC Petition (Appeal Notice, Brief, Reply Brief) Amendment/Reply Petition to Convert to a Proprietary Information After Final **Provisional Application** Power of Attorney, Revocation Status Letter Change of Correspondence Address Affidavits/declaration(s) Other Enclosure(s) (please Terminal Disclaimer **Extension of Time Request** Identify below): Election/ Response to Restriction Request for Refund **Express Abandonment Request** CD, Number of CD(s) Information Disclosure Statement Remarks Certified Copy of Priority Document(s) Response to Missing Parts/ Incomplete Application Response to Missing Parts under 37 CFR 1.52 or 1.53 SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT Firm STOCKWELL & ASSOCIATES, Customer No. 37468 Individual name Signature Date 6 **CERTIFICATE OF TRANSMISSION/MAILING**

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below. Typed or printed name Signature

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.





IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:

Hank Gevedon

Application No.: 10/655,332

Group Art Unit: 3644

Filed: October 03, 2003

Examiner: Alimenti

For: CAST PRACTICE FISH

ELECTION

Mail Stop: Election/Response to Restriction Requirement Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Dear Sir:

In response to the Restriction Requirement mailed August 4, 2004, Applicant submits the following Election.

Applicant hereby elects, **without traverse**, the invention identified by the Examiner as Species 5.1 (active), Species 6.B (IR lure), and Species 8.i (automated or programmed mode) for initial prosecution. Applicant hereby elects, **with traverse**, Species 7.a (bone fish), and Species 9.AA (frequency) for initial prosecution.

Applicant believes that claims 1-13, 15-23, 28-31, 33-47, and 49-51 read on these elected species, and awaits an action on the merits on these elected claims.

Applicant elects Species 7.a (bone fish) and Species 9.AA (frequency) with traverse for the following reasons. According to M.P.E.P. §816:

"[t]he particular reasons relied on by the examiner for holding that the inventions as claimed are either independent or distinct should be concisely stated. A mere statement of conclusion is inadequate. The reasons upon which the conclusion is based should be given."

The Examiner provided no basis or reasons for holding that the bonefish species is independent or distinct from the bass fish species. The Examiner also provided no basis or reasons for holding that the frequency species is independent or distinct from the amplitude species. The applicant believes this designation of species to be noncompliant with M.P.E.P §816, being defective for lack of specificity. As such, without the benefit of the Examiner's explanations as to the basis for these species designations, Applicant finds it difficult to frame an appropriate response.

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Applicant is **not** asserting that the separate bonefish and bass fish species, and separate amplitude and frequency species, are obvious variants of or patentably indistinct from each other. Nor is Applicant asserting that the claims directed to this subject matter be considered obvious variants or patentably indistinct from each other. Under no circumstances should this Election with traverse and corresponding remarks be read as an accession or admission to such an inaccurate conclusion. Rather, Applicant is asserting that a proper response to the restriction requirement cannot be framed because the applicant does not have the benefit of the Examiner's reasons, to which Applicant is entitled under M.P.E.P. §816.

Additionally, the Examiner has not made the required showing that the designated species entail either separate classification, separate status in the art, or require a different field of search. To insist upon restriction, the Examiner **must show** these criteria (M.P.E.P. §808.02, emphasis added). This burden has not been met. Consequently, Applicant believes the above-referenced Sections 7 and 9 of the restriction requirement are improper, and hereby requests that the Examiner withdraw them accordingly.

If there are any problems with this Election, the Examiner is encouraged to contact Applicant using the information below. Applicant looks forward to a prompt examination of the merits of this application.

Dated: August 26, 2004

Respectfully submitted,

Chris Tanner

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